

§ 842.52

(2) Apportion damages against the United States in the same manner as they are apportioned in suits against private persons if local law applies comparative negligence.

(3) Do not deduct proceeds from private insurance policies except to the extent allowed by local law. However, proceeds are deducted if the policy was paid for by the United States.

(4) Deduct compensation and benefits from the Department of Veterans Affairs, or monetary value received from any U.S. Government associated source from the damages which may be awarded. Deduct sick and annual leave payments if local law allows.

(5) Do not approve:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States.

(c) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tort-feasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

§ 842.52 Appeal of final denials.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the settlement authority may waive the time limit for good cause.

(b) Upon receipt of the appeal, the original settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.

(d) The decision of the appellate authority is the final administrative action on the claim.

32 CFR Ch. VII (7-1-09 Edition)

§ 842.53 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs, or under contract. Do not seek contribution or indemnity from US military personnel or civilian employees whose conduct gave rise to government liability.

§ 842.54 Attorney fees.

In the settlement of any claim pursuant to 10 U.S.C. 2733 and this subpart, attorney fees will not exceed 20 percent of any award provided that when a claim involves payment of an award over \$1,000,000, attorney fees on that part of the award exceeding \$1,000,000 may be determined by the Secretary of the Air Force. For the purposes of this paragraph, an award is deemed to be the cost to the United States of any trust or structured settlement, and not its future value.

Subpart G—Foreign Claims (10 U.S.C. 2734)

§ 842.55 Scope of this subpart.

This subpart tells how to settle and pay claims against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death caused by military and civilian members of the US Armed Forces in foreign countries.

§ 842.56 Definitions.

(a) *Foreign country.* A national state other than the United States, including any place under jurisdiction of the United States in a foreign country.

(b) *Inhabitant of a foreign country.* A person, corporation, or other business association whose usual place of abode is in a foreign country. The term “inhabitant” has a broader meaning than such terms as “citizen” or “national”, but does not include persons who are merely temporarily present in a foreign country. It does not require foreign citizenship or domicile.

(c) *Appointing authority.* An Air Force official authorized to appoint members to foreign claims commissions (FCC).

Department of the Air Force, DoD

§ 842.59

§ 842.57 Delegations of authority.

(a) *Settlement authority*: (1) The Secretary of the Air Force has the authority to:

(i) Settle claims for payment of \$100,000 or less.

(ii) Settle claims for more than \$100,000, pay the first \$100,000, and report the excess to the General Accounting Office for payment.

(iii) Deny claims in any amount.

(2) The Judge Advocate General has delegated authority to:

(i) Settle claims for payment of \$100,000 or less.

(ii) Deny claims in any amount.

(3) The Deputy Judge Advocate General, Director of Civil Law, and the Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff are each a foreign claims commission and have delegated authority to:

(i) Settle claims for payment of \$50,000 or less.

(ii) Deny a claim in any amount.

(4) The SJAs of PACAF, USAFE, 9AF (for CENTCOM) and AFSPACECOM (for Greenland and Canada) are each a foreign claims commission and have delegated authority to approve claims for payment arising within their geographic area of responsibility for \$50,000 or less, or deny claims of \$50,000 or less.

(5) The SJAs of Numbered Air Forces in PACAF and USAFE; the SJA of HQ TUSLOG; the SJA of 12AF (for South America); and the SJAs of Lajes AB, Azores, Patrick AFB, FL, and Howard AFB, Panama are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of \$25,000 or less.

(iii) Deny claims for \$50,000 or less.

(6) The SJAs of each Air Force base, station and fixed installation in PACAF, USAFE, and CENTCOM, are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of \$10,000 or less.

(iii) Deny claims for \$25,000 or less.

(b) *Authority to appoint FCCs*. (1) The Chief, Claims and Tort Litigation

Staff, has the delegated authority to appoint a judge advocate or civilian attorney as a FCC and to redelegate all or a part of his or her settlement authority to that FCC.

(2) A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs, and may redelegate all or part of that settlement authority to those FCCs, in writing. Every FCC must have authority to settle claims for at least \$10,000.

(c) *Authority to reduce, withdraw, or restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority, in writing, except no one may reduce or withdraw the authority of a FCC to settle claims for \$10,000 or less.

(d) *Settlement negotiations*. A settlement authority may settle a claim in any sum within its settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority through claims channels to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(e) *Special exceptions*. Do not settle claims for medical malpractice without HQ USAF/JACC approval.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

§ 842.58 Filing a claim.

(a) *How and when filed*. A claim is filed when a federal agency receives from a claimant or authorized agent a properly completed SF 95 or other signed and written demand for money damages in a sum certain. A claim belonging to another agency is promptly transferred to the appropriate agency.

(b) *Amending a claim*. A claimant may amend a claim at any time prior to final action. An amendment must be in writing and signed by the claimant or authorized agent.

§ 842.59 Advance payments.

Subpart Q outlines procedures for advance payments.